



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

**ADDITIONAL MATERIALS**

**Item # 3**

**November 30, 2011**

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: November 28, 2011  
Re: Additional Materials for November 30 Meeting – Letter from Diana Tomasello  
Waterman

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Today, the Ethics Commission received the attached letter from Diana Tomasello Waterman commenting on the audit of Rep. David R. Burns. They were opponents in the 2010 general election for State Representative, District 138. Ms. Waterman takes issue with some of the statements concerning her made by Rep. Burns and C. Wesley Phinney, Jr. in letters received by the Commission and posted on the Commission's website.<sup>1</sup> The letter from Mr. Phinney was apparently written in March 2011, in part to support the large amount of campaign travel reported by Rep. Burns in 2010. The Commission did not receive the letter until roughly two weeks ago, as part of the audit of Rep. Burns' campaign.

With regard to the audit findings, Ms. Waterman:

- questions whether Rep. Burns conducted campaign travel of 50 – 100 miles per day, as Rep. Burns stated in his campaign finance reports (Ms. Waterman says that in a 7½-hour day of campaigning, she traveled much less); and
- states that Wesley Phinney was the 2010 campaign manager for Rep. Burns, is related to Rep. Burns by marriage, and has a vested interest in the Commission's consideration of Rep. Burns' campaign.

Thank you for your consideration of this item.

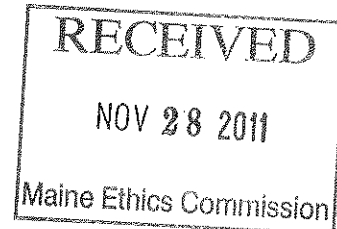
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<sup>1</sup> Issues such as removal of campaign signs and accusations made during campaigning are outside the Commission's jurisdiction.

*diana tomasello waterman*  
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November 27, 2011

To: Jonathan Wayne, Executive Director  
Commission on Governmental Ethics & Election Practices  
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[Jonathan.Wayne@maine.gov](mailto:Jonathan.Wayne@maine.gov)



Re: David Burns audit

Dear Jonathan,

I am writing in response to the letters submitted to the Ethics Commission in March 2011 by Wes Phinney, campaign manager for David Burns, and David Burns. I am truly offended by the lies, misrepresentations and innuendoes directed towards me in both letters, especially since I went to extraordinary lengths to be professional and respectful of David's campaign. Reading the documentation for the 11/30/11 hearing on the Maine Ethics Commission website was the first time I became aware of the existence of these letters.

Background: I was the Democratic candidate in District 138 and lost the general election to Republican David Richard Burns by 163 votes. Wes Phinney is related to David Burns by marriage and served as his campaign manager. Therefore, Wes has a vested interest in the outcome of this audit and hearing as the charges reflect on his integrity.

Early in the campaign, I became aware of David Burns' lack of attention to the rules governing the Clean Election Act. Rather than report him, I called to remind him that his signs did not have the 'authorized by the candidate' required on all Clean Election signs. He said he would have his daughter (treasurer of his campaign) and someone who was 'good with computers,' create the appropriate stickers and put them on his signs. This never happened.

Door to door means exactly that: making contact with constituents in their homes. As a Clean Election candidate, I did not pay myself for travel with MCEA funds. The 2010 MCEA Guidebook says that candidates can absorb their own travel expenditures. Since funds were at a premium, the vast majority of candidates did just that. As you are aware, David paid himself for 57 days of travel, several at exactly 100 miles a day.

Mark Jacobs of Shapleigh, mentioned earlier in documentation submitted to this Commission, drove me on several occasions. In a 7 1/2 hour day going door to door, we traveled approximately 5 miles. Mark & I did not comprehend how anyone could travel 100 miles going door to door in one day in any of our four towns of Shapleigh, Alfred, Limerick or Newfield. Since candidates were required to submit regular reports which the public could access, it became obvious that David was not reporting his travel expenditure accurately. Mark subsequently filed a complaint with the Ethics Commission.

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It's interesting to note that in my door to door travels which are well documented, I met only one family that had been visited by David. And, they greeted me with "We were told not to vote for you because you would take away our guns." I then asked who talked to them. They pulled out David's brochure, pointed to his photo, and said he was there the day before. I responded that I supported the 2nd Amendment and that David and I had never discussed the issue, nor had it been discussed in any forum or campaign event.

The next night I participated in a campaign forum in Limerick with David and other candidates. David's daughter's boyfriend, Kyle Raine, also previously mentioned in this case, asked all the candidates if they supported the 2nd Amendment. I immediately asked to answer first and related my experience of the previous day. I told the story without mentioning any names or making accusations. I said that 'someone' had told a voting family in Shapleigh something that was untrue about me. As I finished speaking, David (seated next to me) whispered that it was Richard Nass (former legislator from our district who was campaigning for David) that spoke to them. I did not respond since it was so disappointing to discover that not only did he not follow the rules we agreed on by accepting public funding, but his veracity was now in question.

As for Wes Phinney's reporting of David's campaigning, signs being destroyed, and comments I was purported to have made, I can only state that fabrication runs rampant in the candidate and his manager. For either Wes or David to say that I would 'complain' or 'challenge' anyone while visiting them for support is ludicrous. The lies and exaggerations throughout both letters are offensive. One glaring example: On p. 41, paragraph 4 of the Agenda, David says that I had no palm cards or literature. The truth is the majority of my Clean Election funds were spent on palm cards and literature.

Every certified Clean Election candidate was required to sign an oath that everything reported was true and accurate. Beneath the signature is the warning:

**"UNSWORN FALSIFICATION IS A CLASS D CRIME (17-A M.R.S.A. § 453)."**

I have always been a strong supporter of Maine's Clean Election Act. Hopefully the Commission will hold anyone who violates the rules and spirit of the Act accountable.

Sincerely,



diana tomasello waterman